

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

CAROLYN MITCHELL,)
)
Plaintiff,)
)
vs.)
)
ANCHORAGE POLICE DEPARTMENT and)
the MUNICIPALITY OF ANCHORAGE, a)
municipal corporation, WALTER)
MONEGAN, Officer HENIKMAN and)
Officer J. VOSS,)
)
Defendants.)

Case No. A05-0273 CV (JWS)

VIDEOTAPE DEPOSITION OF OFFICER ROSS HENIKMAN

APPEARANCES:

FOR THE PLAINTIFF: MR. ISAAC D. ZOREA
MR. MOSHE CALBERG ZOREA
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FOR THE DEFENDANTS: MS. JOYCE WEAVER JOHNSON
Assistant Municipal Attorney
Municipality of Anchorage
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ALSO PRESENT: MS. CAROLYN MITCHELL

* * * * *

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ANCHORAGE, ALASKA 99501

1 Q How do you distinguish between you personally as a --
2 as a police officer for the Municipality, how do you
3 distinguish between an investigatory stop and an
4 arrest? What elements distinguish the two?

5 A Well, to make an arrest I need probable cause.

6 Q Okay. Is there any physical -- if -- if I were
7 observing you making an investigatory stop versus an
8 arrest would I observe any distinguishing behavior or
9 any differences between the two?

10 A It depends on the situation.

11 Q Okay. Well, let's say in the case of a suspected bank
12 robbery?

13 A Could you rephrase your question?

14 Q Okay. If you suspected -- if you had heard that a bank
15 robbery had occurred and you observed a person and you
16 decided to do an inv- -- investigatory stop of that
17 person, how would that differ from making an arrest of
18 that person?

19 MS. JOHNSON: Objection, foundation.
20 Speculation. There's not enough facts in the question.

21 MR. ZOREA: Okay. Well, I can.....

22 MS. JOHNSON: Go ahead.

23 A I would stop the individual and inquire if they
24 committed the bank robbery.

25 Q (By Mr. I. Zorea) Okay. And if you were to arrest the

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1 person you would have had to have -- what would have
2 had to have occurred before you were to make an arrest
3 of the person.....

4 A Well, I would have had to obtain information that would
5 lead me to believe that that person may have committed
6 the bank robbery.

7 Q Okay. Can you recall what case law you might have
8 studied or what materials you referenced that define
9 what elements were required for an investigatory stop?

10 A The one that comes to mind would be Terry versus Ohio.

11 Q Terry versus Ohio. Any Alaska cases that relate to how
12 the Supreme Court applied Terry versus Ohio?

13 A Nothing comes to mind.

14 MR. M. ZOREA: I'm glad you asked for that
15 (indiscernible - away from microphone).

16 Q During the course of your training did you ever fire --
17 what -- what sorts of weapons did you fire?

18 A I fired a Glock Model 21 and a Remington 870 shotgun.

19 Q And after being commissioned as an officer did you
20 carry both of those weapons with you?

21 A Yes.

22 Q How frequently have you had to fire the shotgun during
23 training, how many occasions, was it hours or was it
24 rounds that were spent?

25 A During training it was a certain number of hours.

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ALASKA JUDICIAL BRANCH

1 Q How many hours?

2 A I think it was 40.

3 Q 40 hours, okay. And how many hours on the Glock?

4 A I don't recall exact -- the exact number, but it was a
5 lot of hours.

6 Q More than the shotgun?

7 A Yes.

8 Q Regarding the shotgun how much pressure do you have to
9 apply on the trigger of the shotgun to get it to -- to
10 fire?

11 A I don't know.

12 Q Is it a lot or a little bit? Is there a -- is it a
13 traditional trigger you just pull it and it fires, or
14 is there a double locking mechanism of anything of that
15 type?

16 A I wouldn't be qualified to answer that type of
17 technical question.

18 Q Even though you fired it 40 -- 40 hours.....

19 A I pulled -- I pulled the trigger.

20 Q You just pulled the trigger?

21 A Yes. I don't know offhand without referring to
22 reference material the exact poundage on the trigger.

23 Q Uh-hum. During those 40 hours was a -- do you recall
24 there being a double locking mechanism on the trigger,
25 pull one and pull it again, or is it just a single?

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1 A It's a standard trigger with a single pull.

2 Q All right. Let's reference are you familiar with the
3 events related to this civil suit?

4 A Yes.

5 Q And this incident occurred -- is it your recollection
6 this occurred May 8th, 2004?

7 A Yes.

8 Q So at that time you had been an officer -- commissioned
9 officer for approximately how long?

10 A I'd say year and a half.

11 Q Year and a half.....

12 A Approximately.

13 Q During the course of that year and a half had you
14 arrested very many people?

15 A Yes.

16 Q Approximately how many?

17 A I don't know.

18 Q Have you conducted -- had you conducted very many
19 investigatory stops?

20 A Yes.

21 Q Could you explain what occurred on May 8th, 2004 in
22 your words? How you came to the Sears Mall and what
23 happened when you arrived there?

24 A I heard a report of a armed bank robbery at the Wells
25 Fargo Bank within inside -- or inside of the Sears

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1 Malls. I responded to the mall. I set up on the
2 southwest perimeter and maintained a perimeter
3 position. I heard various radio traffic indicating
4 that there was a possible suspect described as a heavy
5 set Black female with a bag. As I was on the perimeter
6 watching the southwest exit doors of the mall I
7 observed a Black female that matched the description I
8 heard over the radio.....

9 Q Uh-hum.

10 Awalk out of the doors. I stopped her, placed her
11 in handcuffs. I conducted a pat down for weapons.
12 Identified her by her military I.D. And I stood by
13 with her while a show up was conducted. The show up
14 produced a negative result and she was released.

15 Q Breaking that down a little bit, you said you stopped
16 her. How did you stop her?

17 A I told her to turn around, face away from me, walk back
18 towards my voice and I placed her in handcuffs.

19 Q Were you holding any weapons?

20 A Yes.

21 Q What weapon?

22 A A Remington 870 shotgun.

23 Q What was the -- when she exited the building what was
24 the duration of time between when she exited the
25 building and when you placed her in handcuffs?

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- 1 A It was within a minute.
- 2 Q Was she accompanied by any other people?
- 3 A Yes.
- 4 Q And who was with her?
- 5 A Her son.
- 6 Q And how old do you think he was?
- 7 A I don't remember offhand, I think he was 14 or
- 8 thereabouts.
- 9 Q Any other persons come out of the building with her?
- 10 A No.
- 11 Q What did you do regarding the son before you placed
- 12 that plaintiff in handcuffs? Did you separate them --
- 13 the suspect from the son?
- 14 A Yes.
- 15 Q And how did you do that?
- 16 A We had him stand to the side.
- 17 Q Was that you that told him to stand to the side?
- 18 A I don't remember.
- 19 Q Your shotgun, where was it pointed?
- 20 A It was held in the guard position.
- 21 Q And what does that mean?
- 22 A That'll be pointed toward the area of the suspect's
- 23 hands.
- 24 Q Okay. Do you recall where her hands were?
- 25 A I believe she was carrying a bag in one hand.

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1 -- you told her -- told her to turn around?

2 A Yes.

3 Q Before you handcuffed her?

4 A Yes.

5 Q Now when you told her to turn around do you know what
6 Mister -- Officer Voss was doing, was he still holding
7 her at guard?

8 A I don't remember.

9 Q When she turned around what did you do with your
10 weapon, was that still pointed at her?

11 A Yes.

12 Q At what point did you lower your weapon and reach for
13 your handcuffs?

14 A Before I was ready to handcuff her.

15 Q Okay. So she backed up -- you said she backed up. How
16 far did she have to back up to reach where you were,
17 the 15 feet?

18 MS. JOHNSON: Foundation, speculation.

19 A I encountered her at 15 feet, so it's within that
20 range.

21 Q (By Mr. I. Zorea) At the time you -- or prior to
22 handcuffing her, did Ms. Mitchell resist any of your
23 commands?

24 A No.

25 Q Did she seem a flight risk?

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1 MS. JOHNSON: Calls for speculation.

2 A I don't know.

3 Q (By Mr. I. Zorea) Did you -- were you in fear for your
4 safety?

5 A No.

6 Q Did you believe she had a weapon?

7 A I believe she may have had a weapon based on the
8 information I had at the time.

9 Q At the time. Prior to arre- -- putting her in
10 handcuffs did you believe she had a weapon on her
11 person?

12 MS. JOHNSON: Objection, asked and answered.

13 A I believe it was possible she had a weapon based on the
14 information that I had.

15 Q Possible she had a weapon on her right then and there?

16 A Yes.

17 Q What sort of clothing was she wearing?

18 A I believe she had on a -- some type of athletic warm-up
19 outfit.

20 Q Do you recall what sort of shoes she was wearing?

21 A No.

22 Q And what sort of bags did she have? Did she have any
23 bags with her?

24 A Yes.

25 Q What sort of bags were those?

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1 A I believe she had some type of shopping bag and a
2 purse.

3 Q Do you know where the shopping bag was from?

4 A No.

5 Q How is it that Miss -- do you know how Ms. Mitchell
6 happened to exit the Sears Mall from where she exited
7 from?

8 MS. JOHNSON: Objection, foundation,
9 speculation.

10 A She walked out the door. Can you clarify wh- -- you
11 question a little further?

12 Q (By Mr. I. Zorea) Was -- is it your belief that she
13 exited the door at that location voluntarily or was
14 there -- was she e- -- escorted by the police or
15 directed by the police?

16 A All I know is that she walked out the door.

17 Q Okay.

18 A And that's what I saw.

19 Q So when she left building you -- left the building you
20 did not see any other police officers behind her?

21 A No.

22 Q Did you -- before placing her in handcuffs did you ask
23 her to drop her bags?

24 A I don't remember.

25 Q Do you recall whether she backed up towards you with

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ANCHORAGE, ALASKA 99501

1 the bags in her hands or whether you -- on the ground?

2 A I don't remember.

3 Q What prompted you to place her in handcuffs?

4 A I placed her in handcuffs to detain her.

5 Q Could you have detained her without placing her in
6 handcuffs?

7 MS. JOHNSON: Objection, speculation.

8 A I could have, yes.

9 Q (By Mr. I. Zorea) During your training was there any
10 instruction on when it was an appropriate for an
11 officer to place somebody in handcuffs?

12 A Yes.

13 Q And what sort of instruction did you have concerning
14 when you could place somebody in handcuffs?

15 A It depends on the situation. In.....

16 Q (Indiscernible - simultaneous speech).....

17 Athis particular situation I'd information that a
18 armed bank robbery just occurred and someone matching
19 the description of the suspect walked out the doors.
20 It'd be appropriate for not only my safety, but the
21 safety of the public and the safety of that individual
22 to be placed in handcuffs.

23 Q So is it your testimony that you placed her in
24 handcuffs as a safety issue?

25 A That's one of the reasons.

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1 Q Whose safety were you concerned about?

2 MS. JOHNSON: Asked and answered.

3 A I mentioned my safety, the suspect's safety and the
4 safety if the individuals walking around the shopping
5 mall.

6 Q (By Mr. I. Zorea) On the inside of the shop- --
7 shopping mall or.....

8 A Anywhere.

9 Q Yet you testified earlier that you weren't in fear for
10 your safety though, were you?

11 A No, I wasn't. This is what I do for a living.

12 Q How were you protecting Ms. Mitchell's safety by
13 placing her in handcuffs?

14 A I was securing her so that -- it's been my experience
15 that a lot of individuals who may be armed may have
16 access to a weapon, while they're secured it eliminates
17 their access to a weapon, reduces any probability of
18 force.

19 Q After placing her in handcuffs I think you stated that
20 you did a pat down?

21 A Correct.

22 Q Okay. And what -- did the pat down reveal any weapons?

23 A No.

24 Q Did you look inside of the purse?

25 A Yes.

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1 Q Was there a weapon in her purse?

2 A No.

3 Q Approximately how long did it take for you to pat her
4 down and to look in her purse for weapons?

5 A I'd estimate 15 seconds.

6 Q Do you recall how long Ms. Mitchell was handcuffed?

7 A No.

8 Q Would you say that it was a matter of minutes or a
9 matter of seconds?

10 A Minutes.

11 Q What was your reasoning for keeping handcuffs on her
12 after you had ascertained that no weapons were on her
13 person or in her purse?

14 A We had officers at the time going around the Sears Mall
15 with the teller who was a witness to the bank robbery
16 conducting show ups. And Ms. Mitchell was detained
17 until the teller could arrive and view Ms. Mitchell and
18 determine if she was or was not the suspect in the bank
19 robbery.

20 Q Okay. Did -- didn't really answer my question. Why
21 did you keep the handcuffs on her after determining
22 that she didn't have any weapons?

23 A She was being detained.....

24 Q Okay.

25 Apending the show up.

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1 Q Is it required to have a person in detention, it is
2 required to keep them in handcuffs, is that a policy --
3 municipal policy?

4 A No, it's my decision. She still could have been the
5 bank robber.

6 Q During the time that she was handcuffed, do you recall
7 if Ms. Mitchell asked if she could make a telephone
8 call?

9 A I don't remember.

10 Q Do you recall if she said she was concerned about her
11 son?

12 A I believe she did.

13 Q Was that concern for her son directed at you or at
14 another officer?

15 A I don't remember who it was directed at.

16 Q And what sort of statements did she make regarding her
17 son?

18 A I don't remember the exact statements.

19 Q Did you give her any assurances as to her son's safety?

20 A I don't remember.

21 Q Do you recall news camera at any time arrived there on
22 the scene where Ms. Mitchell was?

23 A I believe the news media eventually showed up at the
24 mall. I wasn't paying attention to what they were
25 doing.

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ANCHORAGE ALASKA 99501

1 Q Do you have an estimate of how long it took for the
2 bank teller to arrive at the scene to do a show up?

3 A I would estimate approximately 20 minutes.

4 Q Twenty minutes. And during this 20 minutes was Ms.
5 Mitchell in handcuffs the whole time?

6 A Yes.

7 Q Was Ms. Mitchell in custody?

8 A She was being detained.

9 Q Do you -- do you know what custody is, the term custody
10 means? Is that a term that they use in the police
11 department?

12 A Yes.

13 Q Okay. What -- what does custody mean?

14 A My view of custody is when someone is not free to
15 leave.

16 Q Okay. So was she in custody?

17 A Yes.

18 Q During the time that Ms. Mitchell was detained did you
19 ask her any questions?

20 A I asked her some basic questions regarding her
21 identity.

22 Q Did you ask her if she committed the bank robbery?

23 A No.

24 Q During the time that she was detained did you believe
25 that you were making an investigatory stop?

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- 1 A Yes.
- 2 Q And what was the purpose of that investigatory stop?
- 3 A To determine if the individual that I stopped was the
- 4 suspect in the bank robbery.
- 5 Q And if that was the purpose why is it that you didn't
- 6 ask her any questions about whether she had committed
- 7 robbery?
- 8 A I'm not going to ask any questions about the crime
- 9 unless I read Miranda.
- 10 Q Oh.
- 11 A Conduct an interview with her.
- 12 Q Okay.
- 13 A That wasn't the purpose of this stop.
- 14 Q Okay. The purpose was not to conduct an interview of
- 15 her?
- 16 A That's correct. The purpose was to await a show up
- 17 with the witness.
- 18 Q Okay. At the time that the witness arrived for the
- 19 show up how many officers do you believe were on the
- 20 scene at that time?
- 21 A I'm not sure exactly how many.
- 22 Q More than just you and.....
- 23 A Yes.
- 24 QOfficer Voss? Can you explain the loc- -- the
- 25 geography of where Ms. Mitchell was held during these

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ANCHORAGE, ALASKA 99501

- 1 20 minutes?
- 2 A She was stopped outside the southwest doors of the
- 3 Sears Mall which lead out to the parking lot.
- 4 Q Were there any roads visible from where she was at?
- 5 A Benson Boulevard would be to the south of the mall.
- 6 Could you see New Seward from where she was at?
- 7 A I believe you could.
- 8 Q What time of day was this occurring?
- 9 A I believe it was approximately 1730.
- 10 Q In laymen term 5:30?
- 11 A 5:30 p.m.
- 12 Q Do you recall if there was any traffic on the Benson or
- 13 New Seward roads?
- 14 A Yes.
- 15 Q Did you make any efforts to keep Ms. Mitchell from
- 16 public view during the time she was in handcuffs?
- 17 A No.
- 18 Q Was there a squad car nearby her?
- 19 A Yes.
- 20 Q Why didn't you put her in the squad car?
- 21 A We were waiting a show up. It would have been feasible
- 22 in that situation have her stand there until the
- 23 witness arrived.
- 24 Q When you were in communication with the -- with other
- 25 officers who had the witness with them or how - how did

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ANCHORAGE ALASKA 99501

1 your concerns over the safety, was -- were those --
2 when you mentioned -- let's go to concerns about
3 safety, fear that a hostage could be used as a shield,
4 fear that a citizen at the mall could be taken as a
5 hostage, fear that a suspect could approach a vehicle,
6 were those fears that you specifically had concerning
7 Ms. Mitchell?

8 A I consider those scenarios possible in any type of
9 armed bank robbery?

10 Q Okay. Well, let's -- let's reference specifically your
11 appr- -- your assessment of Ms. Mitchell at that time.
12 Did you fear that she would use her son as a hostage
13 and a shield?

14 MS. JOHNSON: Objection, foundation and
15 speculation.

16 A It's possible she could.

17 Q (By Mr. I. Zorea) Yeah, but I'm not asking possible.
18 I'm asking what was going on in your brain 'cause
19 you're the only one that can tell us what was going on
20 in your brain, you know, what -- what, you know,
21 theories were going through your head, why you did what
22 you did? We need to know.....

23 A The theories that.....

24 Qwhy you did what you did.

25 Awere going on in my -- in my brain were that these

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1 scenarios were possible. They've happened in other
2 cases in the past. It's possible it could happen in
3 this one. I.....

4 Q Okay. I'm asking.....

5 Adon't know what Ms. Mitchell's capable of.
6 I've.....

7 Q Okay.

8 Anever met her.

9 Q Okay. But I'm asking whether or not you believe that
10 she would use her son as a hostage? Not whether it was
11 possible, I'm asking whether you had a realistic fear
12 that she was going to use her son as a hostage in this
13 situation?

14 MS. JOHNSON: Objection, relevance,
15 speculation, and foundation. And the witness has already
16 testified that his fears are not -- it's his procedures that
17 he's telling you.....

18 MR. I. ZOREA: Okay.

19 MS. JOHNSON:and the practicality.

20 MR. I. ZOREA: Just so -- you -- you keep on
21 objecting to relevance. Relevance has -- his credibility has
22 everything to do with relevance. Her emotional distress has
23 everything to do with -- with -- that's all relevant. And so,
24 you know, you can object but I'm asking him a question and I
25 expect him to answer, okay. So you can object for the record

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1 and that's fine. Go.....

2 MS. JOHNSON: Done so.

3 MR. I. ZOREA:right ahead.

4 Q (By Mr. I. Zorea) I'm asking you what was in your
5 brain.....

6 A As I mentioned before I -- I wasn't -- I wasn't in
7 fear.

8 Q You weren't in fear?

9 A No (ph).

10 Q You weren't in fear that she was going to use.....

11 A I wasn't --.....

12 Qher son as a hostage?

13 A I wasn't personally in fear, no.

14 Q Okay. Were you in fear -- 'cause you mentioned these
15 things on -- on her cross and I -- I want to clarify.

16 A Uh-hum.

17 Q Were you in fear that she was going to take a citizen
18 from the mall and use that citizen as a hostage if you
19 had released her from her handcuffs?

20 MS. JOHNSON: Same objections.

21 A I was not in fear.

22 Q Okay. Again, were you in fear she was going to
23 approach a vehicle, let's say, on Benson or on New
24 Seward and subdue whoever was in that vehicle and take
25 off from.....

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ANCHORAGE ALASKA 99501

1 MS. JOHNSON: Same.....

2 Qthe scene?

3 MS. JOHNSON: Same objection.

4 A I was not in fear.

5 Q (By Mr. I. Zorea) Okay. Thank you. Again,
6 specifically, I'm asking specifically what was in your
7 head regarding movement of Ms. Mitchell? Where did you
8 think an arrest would occur if you had moved -- was
9 there a certain specific geographical distance from you
10 apprehended her or where you put her in detention that
11 you think if you had moved her beyond that that an
12 arrest would have occurred?

13 A No.

14 Q Okay. That wasn't really a concern of yours where you
15 moved her?

16 MS. JOHNSON: Objection, misstates the
17 testimony.

18 Q Well, I'm asking you was that an c- -- an actual
19 concern that if you had moved her a certain distance
20 then she would be arrested rather than just detained?

21 A I've reviewed case law where that's happened in
22 previous situations. And I chose not to move her.

23 Q Okay. So, again, we're -- we want specific. When you
24 chose -- when you made the decision not to move her
25 very far from where you handcuffed her, is that

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